

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
UNION OIL COMPANY OF )  
CALIFORNIA, )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB Nos. 547 and 618

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

A consolidated hearing on two matters, first an appeal to review a \$250.00 civil penalty assessed upon appellant for allegedly negligently permitting the escape of oil into public waters, and second, an order requiring that appellant take action to prevent the discharge of oil into public waters, was held before the Pollution Control Hearings Board, Chris Smith, Chairman, and Walt Woodward on March 3, 1975 in Tacoma, Washington. Hearing examiner, David Akana, conducted the proceedings.

Appellant was represented by its attorneys, Peter LeSourd and Donald C. Gearhart; respondent was represented by its attorney, Joseph

1 P. McGoran, assistant attorney general. Eugene E. Barker, Olympia  
2 court reporter, recorded the proceedings.

3 Having read the stipulations of fact, having read the briefs  
4 submitted by each party, having seen the exhibits, and being fully  
5 advised, the Board makes the following

6 FINDINGS OF FACT

7 I.

8 The parties have stipulated to the facts in this matter upon which  
9 this Board shall make its decision:

10 a. the appellant ("Union") is a corporation authorized to do  
11 business in the State of Washington, with a principal place of business  
12 in the state, insofar as applicable to this appeal, at Tacoma, Washington.

13 b. Union owns and operates a bulk oil storage terminal located on  
14 the City Waterway, Commencement Bay, at Tacoma, Washington. The oil  
15 terminal has been operating for a number of years with Union owning and  
16 operating the plant for the last 46 years.

17 c. Union's oil storage terminal consists of the following equipment:  
18 13 petroleum tanks, one warehouse, one office, one truck garage, one dock,  
19 and one truck loading rack.

20 d. The normal operation of the oil storage terminal involves the  
21 receipt by barge and truck, storage, and shipment by truck, of various  
22 petroleum products.

23 e. Immediately adjacent to Union's terminal plant in Tacoma is  
24 Mobil Oil Corporation's ("Mobil") bulk oil storage terminal. In 1971,  
25 oil was leaching into the waterway abutting the Mobil installation.  
26 The United States Coast Guard and the State of Washington Department of

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1 Ecology ("DOE") investigated the leaching. Mobil drilled some test  
2 holes near the leaching area and determined that the oil was flowing  
3 from its installation. It installed an oil-water separator and a  
4 "French drain system" along its seawall, lined at the bottom with a heavy  
5 polyethylene sheet. Both were completed in late 1972. Union believes  
6 it would have to install a similar system if it were ordered to halt  
7 the current leaching of oil from its soil, and has obtained engineering  
8 estimates that the cost thereof would be approximately \$150,000.

9 f. In May 1973, oil began leaching, and periodically continues to  
10 leach, from within the ground into the waterway from Union's abutting  
11 land. Union met with the Coast Guard, the Environmental Protection  
12 Agency, and the DOE. It was then, and is, the position of Union that  
13 the leaching oil does not belong to it, does not originate from any of  
14 its operations, and was not under its control; therefore, Union cannot  
15 be held responsible or penalized in any way for the leaching oil.

16 g. In working with the Coast Guard and the DOE, Union, at the  
17 suggestion of the Coast Guard, voluntarily brought in a containment  
18 boom from its Portland, Oregon operations. The boom accumulating the  
19 leaching oil extends from the shoreline on each end of Union's wooden  
20 wharfhead, thereby forming a closed semicircle within the City Waterway,  
21 partly above Union's submerged property and partly above submerged public  
22 property.

23 h. A "Notice of Penalty Incurred and Due" assessed Union a \$250  
24 fine, pursuant to RCW 90.48.350, for discharging oil into the public  
25 waters of this state on November 23, 1973, in alleged violation of  
26 RCW 90.48.320 because some floating oil escaped from the boom. Upon

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1 consideration of an application for relief, the penalty assessment was  
2 affirmed in a "Notice of Disposition Upon Application for Relief from  
3 Penalty" in Docket No. DE 74-6. Union has appealed this determination  
4 to this Board. The DOE has requested a formal hearing thereon,  
5 designated as PCHB No. 547. Without admitting carelessness, negligence  
6 or a duty to control, Union stipulated that it will pay the said  
7 \$250 fine if a final determination is entered herein upholding  
8 Respondent.

9 1. Claiming a violation of RCW 90.48.320, the DOE also issued  
10 Docket No. DE 74-7, under the authority of RCW 90.48.120,  
11 requiring appellant to take effective action to prevent the discharge  
12 of oil by leaching "from property under its control" and into the public  
13 waters of this state. Union has appealed this order to the Board. Bot  
14 parties jointly requested a formal hearing thereon, designated as  
15 PCHB No. 618.

16 j. The oil which surfaces within the semicircled boomed area  
17 leaches from within the ground and is coming out of the land which is  
18 owned by Union and used for its Tacoma terminal.

19 k. The originating source of the oil which is leaching has not  
20 been established. In 1973 and 1974, the Environmental Protection Agency  
21 conducted laboratory analyses of oil samples taken from the City  
22 Waterway, Mobil and Union. In both instances, the reported laboratory  
23 results were that the source of the leaching oil could not be identified  
24 therefrom. On the other hand, Union has conducted laboratory analyses  
25 of oil samples taken from the leaching oil and other sources and believes  
26 that the results thereof establish that:

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1 (1) the leaching oil is not a kind which has ever been made by  
2 Union or stored by Union on its Tacoma terminal property;

3 (2) the leaching oil matches that made by another manufacturer  
4 and stored on property other than Union's;

5 (3) the leaching oil must therefore be flowing or seeping  
6 underground into and through Union's property from a point outside of  
7 Union's property.

8 1. Union's pipelines at its Tacoma terminal were tested after the  
9 leaching began and were found to be sound and not leaking.

10 m. The parties hereto cannot agree at the present time whether or  
11 not the origin or ownership of, or control over, the leaching oil can be  
12 established. Likewise, it is not known how long that determination  
13 would take. Therefore, for the purpose of this litigation, it is to  
14 be assumed that the leaching oil does not originate from any of Union's  
15 operations at its Tacoma terminal, and is coming from a currently  
16 unidentified third-party source not under Union's control, located outside  
17 the boundaries of the property owned by Union on which its Tacoma  
18 terminal is located.

19 II.

20 The parties stipulated to the following issues of law:

21 a. Assuming that the leaching oil does not originate from any of  
22 Union's operations at its Tacoma terminal, and is coming from a currently  
23 unidentified third-party source not under Union's control, located  
24 outside the boundaries of the property owned by Union on which its  
25 Tacoma terminal is located, do the laws of Washington allow the Board to  
26 affirm the DOE's decisions in Docket Nos. DE 74-6 and DE 74-7?

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1 b. Should the order in Docket No. DE 74-6 (PCHB No. 547) be  
2 affirmed, reversed or remanded?

3 c. Should the order in Docket No. DE 74-7 (PCHB No. 618) be affirmed,  
4 reversed or remanded?

5 III.

6 Any Conclusion of Law hereinafter recited which should be deemed  
7 a Finding of Fact is hereby adopted as such.

8 From these Findings comes the following

9 CONCLUSIONS OF LAW

10 I.

11 The Board has jurisdiction over the parties and over the subject  
12 matter of this proceeding.

13 II.

14 The appropriate statute in this case is RCW 90.48.320 which  
15 provides in part that:

16 It shall be unlawful . . . for oil to enter the waters of the  
17 state from any ship or any fixed or mobile facility or any  
18 installation located offshore or on shore whether publicly or  
19 privately operated, regardless of the cause of the injury or  
fault of the person having control over the oil, or regardless  
of whether it be the result of intentional or negligent  
conduct, accident or other cause.

20 Respondent herein urges this Board to adopt a rule that would  
21 recognize a violation of the above-quoted statute where a person, not  
22 the cause in fact of the leaching oil, only owns the land through  
23 which the oil is leaching. According to the respondent, such person has  
24 "control" over the oil by virtue of ownership of the land. "Control" of  
25 oil is statutorily defined in RCW 90.48.315(6):

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1 "Having control over oil" shall include but not be limited to  
2 any person using, storing or transporting oil immediately  
3 prior to entry of such oil into the waters of the state, and  
shall specifically include carriers and bailees of such oil.

4 Although the statute uses the phrase "shall include but not be limited  
5 to," we do not think such phrase can fairly include, without more, the  
6 owners of only land under which leaching oil is trespassing. Moreover,  
7 in view of the stipulations of fact, the oil ownership cases cited by  
8 the respondent are inapposite. The oil involved here is not natural oil,  
9 but oil originating from a third party.

10 Even aided with the liberal construction of the pertinent statutory  
11 provisions (RCW 90.48.907) and the strong policy considerations of  
12 RCW 90.48.010, we cannot find "fault" unless it is established by the  
13 respondent that the appellant somehow caused a violation. The  
14 stipulations of fact foreclose any possibility that the appellant owned  
15 the subject oil. In addition, and based upon these stipulations, we  
16 hold that the appellant did not control the oil within the meaning of  
17 RCW 90.48.315(6).

### 18 III.

19 Although we conclude that the appellant is not responsible for the  
20 oil pollution problem, it has nevertheless agreed to maintain the  
21 containment boom for a reasonable time in view of its own interest to  
22 protect the waters of the state. This gesture, in the public interest,  
23 is certainly laudatory.

### 24 IV.

25 Any Conclusion of Law which should be deemed a Finding of Fact is  
26 hereby adopted as such.

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1 From these Conclusions the Pollution Control Hearings Board enters  
2 this

3 ORDER

4 The \$250 civil penalty (DE 74-6) assessed by the respondent is  
5 reversed. The respondent's Order (DE 74-7) requiring the appellant to  
6 submit plans to the respondent and to implement such plans after approval  
7 thereof, is reversed.

8 DATED this 31st day of March, 1975.

9 POLLUTION CONTROL HEARINGS BOARD

10 Chris Smith  
11 CHRIS SMITH, Chairman

12 Walt Woodward  
13 WALT WOODWARD, Member

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